

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

PROMOTION IN MOTION INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 15-212-RGA
	:	
FERRARA CANDY COMPANY and	:	
FERRARA CANDY COMPANY	:	
HOLDINGS INC.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

Plaintiff moves to amend its complaint to add more accused products. (D.I. 68).

Defendant opposes.

The controlling scheduling order is dated February 1, 2016. (D.I. 42). It does not address the timing of motions to amend. That was addressed by an earlier scheduling order, dated June 5, 2015 (D.I. 15), which provided a date of December 17, 2015, as the last date for amendment of pleadings.

Trial is scheduled for March 20, 2017, and opening expert reports are due on October 12, 2016. (D.I. 42).

The first question is whether Plaintiff has established good cause for its late motion to amend. I think Plaintiff has met that standard. Plaintiff says it learned about the additional accused products through the production of documents, after the motion to amend deadline. Defendant does not dispute that, but says Plaintiff could have learned about the additional products the same way it learned about the first three accused products. I think Plaintiff has the

better of this, pointing out that the additional products include house brands, that is, products that are not identifiable as coming from Defendant.

I do not think there is any significant prejudice to Defendant. Plaintiff states that the only additional discovery it would need would be revenue figures relating to the seventeen additional products. I also do not think amendment would be futile. Defendant seems to say the whole case has no merit, and the amended products are just more of the same. Plaintiff disagrees. Thus, I think Plaintiff will state a claim against the additional products, and they will rise or fall with the rest of the case.

Thus, the motion to amend (D.I. 68) is **GRANTED**.

The parties should promptly meet and confer about any additional necessary discovery, and make arrangements to promptly complete such additional discovery.

Further, the parties' briefing suggests to me that it might be advisable to give the parties the opportunity, should either or both want it, to file one summary judgment motion and no-more-than twenty page brief on January 6, 2017, with answering briefs of no more than twenty pages due January 13, 2017, and reply briefs of no more than ten pages due January 20, 2017.

IT IS SO ORDERED this 11 day of October 2016.


United States District Judge